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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

13 SHERILANI GARRETT
5 Del Perlatto
14 Irvine, CA 92614

15 Respondent.

Case No. 2010-507

STATEMENT OF ISSUES

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17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
21 her official capacity as the Interim Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about December 28, 2009, the Board of Registered Nursing, Department of
24 Consumer Affairs received an application for a Registered Nursing License from Sherilani
25 Garrett (Respondent). On or about December 13, 2009, Sherilani Garrett certified under penalty
26 of perjury to the truthfulness of all statements, answers, and representations in the application.
27 The Board denied the application on February 4, 2010.
28

JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2736 of the Business and Professions Code (Code) provides, in pertinent part, that the Board of Registered Nursing (Board) may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

1 (1) Been convicted of a crime. A conviction within the meaning of this
2 section means a plea or verdict of guilty or a conviction following a plea of
3 nolo contendere. Any action which a board is permitted to take following
4 the establishment of a conviction may be taken when the time for appeal
5 has elapsed, or the judgment of conviction has been affirmed on appeal, or
6 when an order granting probation is made suspending the imposition of
7 sentence, irrespective of a subsequent order under the provisions of Section
8 1203.4 of the Penal Code.

9 (2) Done any act involving dishonesty, fraud or deceit with the intent to
10 substantially benefit himself or another, or substantially injure another; or

11 (3) Done any act which if done by a licentiate of the business or profession
12 in question, would be grounds for suspension or revocation of license.

13 The board may deny a license pursuant to this subdivision only if the crime or
14 act is substantially related to the qualifications, functions or duties of the
15 business or profession for which application is made.

16

17 7. Section 482 of the Code states:

18 Each board under the provisions of this code shall develop criteria to evaluate
19 the rehabilitation of a person when:

20 (a) Considering the denial of a license by the board under Section 480; or

21 (b) Considering suspension or revocation of a license under Section 490.

22 Each board shall take into account all competent evidence of rehabilitation
23 furnished by the applicant or licensee.

24 8. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by a
26 board within the department pursuant to law to deny an application for a license or
27 to suspend or revoke a license or otherwise take disciplinary action against a
28 person who holds a license, upon the ground that the applicant or the licensee has
been convicted of a crime substantially related to the qualifications, functions, and
duties of the licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred, but only of that fact,
and the board may inquire into the circumstances surrounding the commission of
the crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

1 As used in this section, "license" includes "certificate," "permit,"
2 "authority," and "registration."

3 9. Section 2761 of the Code states:

4 The board may take disciplinary action against a certified or licensed nurse
5 or deny an application for a certificate or license for any of the following:

6 (a) Unprofessional conduct, which includes, but is not limited to, the
7 following:

8

9 (f) Conviction of a felony or of any offense substantially related to the
10 qualifications, functions, and duties of a registered nurse, in which event the
11 record of the conviction shall be conclusive evidence thereof.

12

13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the
15 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for
16 a person licensed under this chapter to do any of the following:

17

18 (b) Use any controlled substance as defined in Division 10 (commencing
19 with Section 11000) of the Health and Safety Code, or any dangerous drug
20 or dangerous device as defined in Section 4022, or alcoholic beverages, to an
21 extent or in a manner dangerous or injurious to himself or herself, any other
22 person, or the public or to the extent that such use impairs his or her ability
23 to conduct with safety to the public the practice authorized by his or her
24 license.

25 (c) Be convicted of a criminal offense involving the prescription,
26 consumption, or self-administration of any of the substances described in
27 subdivisions (a) and (b) of this section, or the possession of, or falsification
28 of a record pertaining to, the substances described in subdivision (a) of this
section, in which event the record of the conviction is conclusive evidence
thereof.

. . . .

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

- (a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.
- (b) Failure to comply with any mandatory reporting requirements.
- (c) Theft, dishonesty, fraud, or deceit.
- (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445, states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

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1 was arrested for driving under the influence of alcohol. Her blood alcohol content was .20% by
2 weight.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

4 (Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)

5 15. Respondent's application is subject to denial under sections 480(a)(3) and 2762(b) of
6 the Code in that on or about March 22, 2008 and May 19, 2009, Respondent exhibited
7 unprofessional conduct when she used alcohol to an extent or in a manner dangerous or injurious
8 to herself and the public, as set forth above in paragraphs 12-13, which are incorporated as if fully
9 set forth herein.

10 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

11 (Conviction of Crime Involving Alcohol)

12 16. Respondent's application is subject to denial under sections 480(a)(3) and 2762(c) of
13 the Code in that on or about August 14, 2008 and January 15, 2010, Respondent was convicted of
14 crimes involving alcohol, as set forth above in paragraphs 12-13, which are incorporated as if
15 fully set forth herein.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Board of Registered Nursing issue a decision:

- 19 1. Denying the application of Sherilani Garrett for a Registered Nursing License;
20 2. Taking such other and further action as deemed necessary and proper.

21 DATED: 4-14-10

22 *Louise R. Bailey*
23 LOUISE R. BAILEY, M.ED., RN
24 Interim Executive Officer
25 Board of Registered Nursing
26 Department of Consumer Affairs
27 State of California
28 Complainant

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